LEGISLATION TO ENLARGE THE AUTHORIZED MEMBERSHIP OF THE BOARD OF VETERANS APPEALS

HEARING

BEFORE THE

SUBCOMMITTEE ON
COMPENSATION, PENSION, AND INSURANCE

OF THE

COMMITTEE ON VETERANS' AFFAIRS
HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

FIRST SESSION

APRIL 6, 1983

Printed for the use of the Committee on Veterans' Affairs

Serial No. 98–10

U.S. GOVERNMENT PRINTING OFFICE

20–070 O WASHINGTON : 1983

H761-13

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LEGISLATION TO ENLARGE THE AUTHORIZED MEMBERSHIP OF THE BOARD OF VETERANS APPEALS

WEDNESDAY, APRIL 6, 1983

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMPENSATION,
PENSION AND INSURANCE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to call, at 9 a.m., in room 334, Cannon House Office Building, Hon. Douglas Applegate (chairman of the subcommittee) presiding.

Present: Representatives Applegate and Martinez.

OPENING STATEMENT OF CHAIRMAN APPLEGATE

Mr. APPLEGATE. Good morning.

The subcommittee will come to order.

This morning we will receive testimony on legislation which will address the persistent problems of a steadily increasing caseload and steadily decreasing service at the Board of Veterans Appeals. Since 1946, the membership of the Board has been limited by law to 50 members. Since that time, the veteran population has almost doubled, as has the number of appeals processed by the Board. Predictably, the volume has exceeded the capacity to dispose of them.

On February 8, 1983, I introduced H.R. 1312[1] which would simply expand the permissible Board membership from 50 to 60 members. On March 10, the Administration submitted their draft proposal introduced as H.R. 2194,[2] which would permit a maximum of 65 members to be appointed and would also provide some flexibility by letting the Chairman of the Board of Veterans Appeals designate an attorney adviser as an acting Board member.

The Administration has included additional funds in their budget request to start the expansion in fiscal year 1984, contingent upon approval of authorizing legislation. These funds were included in the House-passed First Concurrent Budget Resolution.

I want to point out that this legislation is an authorization measure, which must be reported by the full committee by May 15. This proposal does not mandate the Administrator to expand the Board, it simply gives him the discretion to do so. Also, as an authoriza-

[1] See p. 11.
[2] See p. 12.

tion measure, if enacted into law, it would be subject to the availability of appropriations.

Representative McEwen is not here at this time. His plane has just landed. I will recognize him when he does come in for some comments that he may wish to make.

In the meantime, our first witness will be Mr. Ken Eaton, Chairman of the Board of Veterans Appeals.

Mr. Eaton, would you please introduce the witnesses accompanying you and then you can proceed in any manner that you wish.

If you prefer to summarize, your entire statement without objection will be entered into the record.

STATEMENT OF KENNETH E. EATON, CHAIRMAN, BOARD OF VETERANS APPEALS, ACCOMPANIED BY JAN DONSBACH, SPECIAL ASSISTANT; AND JAMES DERHAAG, SPECIAL ASSISTANT, VETERANS' ADMINISTRATION

Mr. EATON. Thank you. Good morning, Mr. Chairman.

Mr. Roger Bauer, the Vice Chairman of the Board, is unable to be here today.

I have with me today two special assistants, Mr. Jan Donsbach on my left and Mr. Jim Derhaag on my right.

As a summary of the statement which I have submitted, I would like to comment that it is a pleasure for me to be able to report today that we are on the threshold of an expansion of the Board of Veterans Appeals which we feel is essential to reaching some improvements in response time for appellate decisions. Unfortunately, in the past several years the response time has increased gradually from some 10 or 11 months on the average to up to 16 months.

We hope to be able to stem that tide, so to speak, with this expansion, and at least be able to enter as many decisions as there are appeals being submitted for decision.

Of course, one of the problems then arising is the limit of Board members. That is one of the things we are here to discuss today.

The limit of 50 Board members really only permits us to properly operate 16 sections of the Board of Veterans Appeals. If we are limited to 16 sections, we can only do approximately 35,000 to 36,000 decisions a year. Hopefully, with 19 sections of the Board, we will be able to do approximately 41,800 decisions—that is of course an estimate. That would be about the same number that we receive each year.

As you know, there is a provision the Administration is submitting for 65 Board members as opposed to 60. With 60 we certainly can operate fully the 19 sections of the Board which the proposed budget calls for. We count 2 deputy vice chairmen in this total of Board members, and it would give us I think just 1 alternate in addition to the 19 fully staffed sections.

We would hope that there would be a chance in the future of further expansion. It may not be necessary but, quite frankly, with the number of appeals being filed, it would not be surprising if that were to happen in future years.

If that were to be true, then the 60 would be a limit we would have to come right back with, and that is one reason we suggest

the possibility of 65, so we would not have to come back the following year.

I believe in general that is all I would like to say at this time, Mr. Chairman.

[The prepared statement of Mr. Eaton is on p. 14.]

Mr. APPLEGATE. Thank you, Mr. Eaton. We really appreciate your statement and your being here.

I do want to say that we are pleased that the Administration has at last recognized the plight of your Board and has asked Congress to help.

For the past 3 years this subcommittee, as you know, has held hearings to document the steadily increasing load that has been facing your Board. For example, last year you said in 1979 it took an average of 308 days to dispose of an appeal, which is shocking in itself.

In 1980, this average increased to 351 days, and then in 1981, 427 days. The average for 1982 has now gone up to 483 days. I think we can do something about that this year, and we are hoping that we will be able to.

You say you are planning for expansion to 19 sections in fiscal year 1984. If we enact legislation as we are considering today and if the VA appropriations bill including your funds is passed before October, do you feel that you could start your expansion in October, and will you have space available to accommodate the new people?

Also, do you feel you will have qualified candidates available so that the new sections can be productive early in the next fiscal year?

Mr. EATON. Yes, sir.

As to the candidates, potential candidates available, I have no doubt in my mind but that we have the nucleus for the 19 sections on the Board right now. We have some 40 GS–14 senior attorneys who have 8 to 10, sometimes 15 years of experience. They are well qualified to move up into these Board member positions where the expansion would take place.

It is true that we would have to hire somewhere in the neighborhood of 35 to 40 attorneys. We have certain plans regarding how we will bring them on assuming this legislation is enacted. We would spread them throughout the various sections, and get them trained as soon as possible so we will be operational as expeditiously as possible.

For example, in anticipation of this increase and this expansion, I am gradually phasing in a nucleus of new sections now, with the existing personnel, so that it will not be difficult to make this expansion adding new people into the sections.

The matter of space is a little bit more difficult to answer at this moment. I cannot answer that completely. I am prepared to squeeze even further if necessary in order to operate all the people that I would have to have with the space I now have. It would be extremely difficult, to be sure.

I know that the Administrator is aware of the situation on space, and he is working on it. I cannot tell you what the answer will be, as to what space will be available. I have received some assurance

that I will get additional space for this purpose. That is all I know about that point.

But we are ready to reorganize into the 19 sections very quickly.

Mr. APPLEGATE. Thank you, Mr. Eaton.

Let me ask you this: What is it that you foresee down the road?

When we look at the increasing number of days that it takes and how it has reached 483 days, if we add these 19 sections, and additional people, do you see us reaching that point where there is really going to be a measurable difference that will allow us to determine what the status of these veterans is?

Mr. EATON. We watch the trends very carefully out in the field to see the number of notices of disagreements filed and can pretty well anticipate what the future year will bring us at the Board of Veterans Appeals. We have generally been, if I may say so, rather conservative in our estimates as to the number of new appeals being filed.

Usually, if there is a trend downward, we predict that trend going down and expect it to continue. If the trend is slightly going up, as it is at the present time, we always anticipate that it is about to level off. Now, that may be a bit conservative, but we don't want to be alarmists either. So we keep thinking it is going to level off. And that is where we are right now.

Actually, it is still gradually on the rise as far as the number of new appeals coming in. But we keep thinking it is going to level off.

So assuming that it does level off, and that we have 19 sections of the Board, we will be able to, as I say, get out as many cases as we get in. But we will not be able to bring the response time down.

The 16 months from the time the notice of disagreement is filed until the Board decision is entered, that 16 months will remain relatively the same if we have 19 sections. It will not go down, assuming that the number of appeals coming in each year levels off. If it continues to rise, we would lose ground even at 19 sections.

Mr. APPLEGATE. One of the witnesses today apparently has some concern about the proposal in H.R. 2194 to permit you to designate attorney advisers to serve as acting members of the Board, with the possibility that you could have as much as one-third of all sections serving in a temporary capacity.

Would you comment on that?

Mr. EATON. Yes, indeed. I can understand that concern. I would like to explain how this happens to come about.

We have really been using this procedure over the years as it stands. As long as I have been there at the Board, some 22 years, we have off and on used acting Board members to substitute for the regular Board members when they are absent. We use this on a very short-term basis, very limited basis. No one ever sits in for any lengthy period of time.

There is an exception having to do with the doctors. Occasionally a doctor will come aboard and we will take some time, perhaps up to 1 year, to get acquainted with the doctor, and for the doctor to get acquainted with us, before he or she is apppointed to the Board. But that is an exception that I think we are not really referring to here.

In general, we are talking about the attorneys. As to the attorneys, we have these senior attorneys, GS–14's, and they will sometimes be used half a day or perhaps 1 day in 1 week. Once in a while we may use one for a week or two at a time, if there is a particular need in a section for that. But we do not generally use them for any lengthy period of time.

Now, there is a situation that can come up, if we have a limitation as to the number of Board members permissible, and we are trying to operate a larger number of sections. If we did use an acting Board member for a lengthy period of time, we would want to do what we call a temporary appointment which would pay them at the GS–15 level, because they are doing that work. We have not done that as yet, but we have considered that possibility.

That situation would only be on a merit basis for 6 months to 1 year at the most. There are limitations on how long you can use a temporary. We generally use them only for a day or so at a time, and that is nothing new. This is the practice we have always had, but we are trying to clarify it in this legislation.

Mr. APPLEGATE. Does the Office of Personnel Management have regulations or requirements which would limit the duration of such details?

I ask these questions because I want to see you use what resources you have to reduce your caseload to an acceptable level. At the same time, we would not want to use these details in an excessive manner.

Mr. EATON. Yes. There is one that I can think of.

If we were not careful and we used a GS–14 for any period of time up to 3 months or 6 months in that capacity and didn't pay them as a GS–15, the OPM would tell us we are not doing that right and that we should pay them as a 15 because they are doing 15 work. You cannot keep a person as an acting or temporary for any lengthy period of time and not pay them at that rate.

That is the only limitation I am aware of. So for that reason we are very careful not to keep someone on for any longer period of time acting as a Board member.

Mr. APPLEGATE. Mr. Eaton, it seems to me that your use of attorney advisers in an acting capacity would give you an opportunity to accomplish training for future Board candidates. Could you give us some of your ideas and thoughts on that?

Mr. EATON. Very much so. It is quite helpful to give them the opportunity to work on the Board, to see how the other Board members think, how they operate, to get some feel for the voting arrangement.

Of course all of these senior attorneys have been working for the Board for quite a few years, so they are well aware of the rules of evidence and the laws involved and the benefits. But it does help them from a training standpoint to get in there once in a while and get the feel of what is going on in that section.

We only have enough Board members so that if they are all there they will fill all of the spots. We have no extras, no alternates really at all. That causes a problem whenever anyone is gone on a travel board or on leave, we don't want to use one Board member in two sections at the same time because that would divide

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their time up, and they need all their time to devote to the cases in one section. That is why we use these acting members.

Mr. APPLEGATE. Thank you, Mr. Eaton.

The gentleman from California, Mr. Martinez.

Mr. MARTINEZ. No questions, Mr. Chairman.

Mr. APPLEGATE. Thank you very much, Mr. Eaton.

We recognize your responsibilities and we hope to alleviate some of those.

Mr. EATON. Thank you, sir.

Mr. APPLEGATE. Next we have the National Legislative Director for Disabled Veterans, Mr. John Heilman.

Mr. Heilman, it is very good to have you here today. We would like to hear your thoughts.

STATEMENT OF JOHN F. HEILMAN, NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS

Mr. HEILMAN. Yes, sir. Thank you, Mr. Chairman. Good morning.

I can be quite brief. DAV supports the pending legislation and in terms of the differences between the two bills regarding raising the ceiling 60 versus 65, we tend to opt for the higher figure, if the committee feels the resources are there.

The caseloads have increased substantially over the years. As Mr. Eaton noted, the present ceiling was put in the law in 1946. NOD's have been up. Appeals received have been up. The substantive appeals pending at the end of each year have incrased quite dramatically.

We feel they need these additional personnel to fulfill their mission.

Briefly, we are in support of the legislation.

Mr. APPLEGATE. I appreciate very much your input into this.

The gentleman from California, Mr. Martinez.

Mr. MARTINEZ. I have no questions at this time, Mr. Chairman.

Mr. APPLEGATE. OK.

Mr. Heilman, thank you very much for appearing before our committee today. We appreciate your input.

Mr. HEILMAN. Yes, sir. Thank you.

[The prepared statement of Mr. Heilman is on p. 22.]

Mr. APPLEGATE. Next we have the special legislative consultant for AMVETS, Lt. Col. David J. Passamaneck.

STATEMENT OF LT. COL. DAVID J. PASSAMANECK (RETIRED), SPECIAL LEGISLATIVE CONSULTANT, AMVETS

Colonel PASSAMANECK. Thank you for the privilege of appearing before this distinguished subcommittee to present the views of the American Veterans of World War II, Korea and Vietnam.

My name is Col. David J. Passamaneck and I am presently serving as a special legislative consultant to Robert Martin, the National Commander of AMVETS.

AMVETS is in favor of legislation which would provide for the expansion of the Board of Veterans Appeals. The substantial and continuous backlogs with which the Board of Veterans Appeals has been afflicted in recent years would certainly make it difficult for

any responsible advocate of veterans' entitlements to oppose an augmentation of the Board.

This subcommittee is here considering two bills to accomplish such an expansion of the Board of Veterans Appeals. H.R. 1312, introduced by Mr. Applegate, would simply permit the membership of the Board to increase to 60, 10 more than the current maximum.

H.R. 2194, also introduced by Mr. Applegate, on request of the Veterans' Administration, would permit the Board to be expanded to 65 members and would permit the Chairman to designate a maximum of 1 person per BVA section to act in the capacity of a Board member. H.R. 2194 would also clarify some potentially inconsistent language in sections 4001 and 4002 of title 38, United States Code.

AMVETS favors expansion of the Board of Veterans Appeals to 65. However, we vigorously oppose the institutionalization of the authority of the Chairman of the Board to appoint acting Board members without limit as to the time or duration of their tenure.

Now, I am directing my remarks at this point to the questions that you asked previously, Mr. Chairman, of Mr. Eaton. We do not wish to imply that this authority such as it exists at present has ever been abused. We do not suggest that it may be abused under this Chairman or any future Chairman in particular. However, we all know that authority that exists in law can potentially be abused.

We are particularly concerned with this authority, coupled with a substantial expansion of the membership of the Board, because right now the authority to appoint acting members is used to fill in gaps in the current limit. When this limit is increased to 65, there will be a whole batch of new potential assignments which could be filled for a year or two or whatever under this, the way the bill is currently drafted. We feel this would be a serious potential compromise of the quasijudicial integrity of the Board members.

That is really all I have to say at this time. If there are any questions I would be glad to answer them.

[The prepared statement of Colonel Passamaneck is on p. 28.]

Mr. APPLEGATE. I thank you very much for your comments. They certainly will be taken under advisement. I appreciate your frankness.

Mr. MARTINEZ. Yes. I am trying to understand what the objection is to a temporary appointment.

Colonel PASSAMANECK. Well, sir, under the current law, members, regular members of the Board of Veterans Appeals, are appointed by the Administrator of Veterans' Affairs and confirmed by the President. It requires two extremely high governmental officials to make this appointment.

Under the proposed legislation the Chairman could in effect appoint a member of the Board who would have all the power of a regular member, be able to adjudicate cases and so forth, for an indefinite period of time on his own say-so, without any consultation with anybody else, without the approval of the President or the Administrator.

We feel that is just putting too much power in the hands of the chairman, frankly.

Mr. MARTINEZ. Who knows, he might make a better appointment than the President might make.

Colonel PASSAMANECK. That may be.

Mr. MARTINEZ. It really comes down to you feeling that the two high authorities are capable of making a better appointment.

Colonel PASSAMANECK. We feel it would be more of a safeguard against an arbitrary appointment, or the appointment of somebody for personal or political reasons which might not be relevant to the requirements of the job, yes, sir.

Mr. MARTINEZ. Thank you.

Thank you, Mr. Chairman.

Colonel PASSAMANECK. Thank you, sir.

Mr. APPLEGATE. Thank you, Mr. Passamaneck.

In our Oversight Committee we will, of course, be sure to keep close observation on the actions, too.

Colonel PASSAMANECK. Thank you, Mr. Chairman.

Mr. APPLEGATE. At this time we have Donald Schwab, Director, National Legislative Service, Veterans of Foreign Wars.

STATEMENT OF DONALD H. SCHWAB, DIRECTOR, NATIONAL LEGISLATIVE SERVICE, ACCOMPANIED BY FRANK CLARK, CHIEF APPEALS CONSULTANT, VETERANS OF FOREIGN WARS

Mr. SCHWAB. Thank you, Mr. Chairman.

The gentleman on my right is Mr. Frank Clark, the chief appeals consultant for the Veterans of Foreign Wars.

Thank you for the privilege of appearing here today.

Mr. Chairman, the Board is currently receiving approximately 41,000 substantive appeals per year and is capable of rendering only 36,000 appellate decisions. Obviously this situation results in the development of an extensive backlog which in turn significantly increases response time. The processing time of appeals from date of receipt of notice of disagreement to appellate disposition has deteriorated from 10 months in 1978 to more than 16 months at the conclusion of fiscal year 1982.

It is interesting to note that the time required by the Veterans' Administration regional office to carry out its activities in individual cases has remained relatively stable over the past 5 years, while the time charged to the Board of Veterans Appeals, including the period in which the case remains in a callup status, has grown from 4 months in 1978 to 9 months at the end of fiscal year 1982.

Mr. Chairman, the VFW commends you for recognizing and responding to this problem by introducing two bills to increase the Board of Veterans Appeals.

Mr. Chairman, each Board section is capable of deciding between 2,000 and 2,200 cases per year. Therefore, 19 sections could resolve between 38,000 and 41,800 cases annually and 20 sections as many as 40,000 to 44,000 cases. In view of the projected backlog of some 20,000 cases by the end of fiscal year 1983 and the inordinate length of time veterans and their survivors must wait to learn the outcome of an appeal, the Veterans of Foreign Wars recommends the advancement and passage of H.R. 2194 to increase the Board to 65 members.

As we have stated in previous hearings before this subcommittee, our staff of appeals consultants do not always agree with decisions of the Board of Veterans Appeals. Notwithstanding, they are in complete unanimity that members of the Board of Veterans Appeals are dedicated public servants who carry out their assigned responsibilities in a highly professional manner.

This concludes my testimony, Mr. Chairman, and my colleague or I will be happy to respond to any questions you may have.

[The prepared statement of Mr. Schwab appears on p. 31.]

Mr. APPLEGATE. Thank you very much, Mr. Schwab.

The gentleman from California?

Mr. MARTINEZ. No questions.

Mr. APPLEGATE. I have no questions.

Thank you very much for appearing.

We may have to have all of you answer some additional questions that we may submit to you in writing. We would ask that you respond promptly so that we can complete our action on this as quickly as we possibly can in time for our submittal to the Budget Committee.

Mr. McEwen obviously has not made it to this point. He is the ranking minority member. He does have a statement. Without objection, that will be entered into the record.

[The statement of Congressman McEwen appears on p. 35.]

Mr. APPLEGATE. The American Legion will also submit their statement for the record. We will look forward to receiving that.

[The statement of the American Legion appears on p. 37.]

Mr. APPLEGATE. There doesn't seem to be too much opposition to this. This is one of the kinds of bills that we like to have before our committee. It makes it very easy.

I think with that, we will adjorn the meeting. Thank you all very much for coming.

[Whereupon, at 9:30 a.m., the subcommittee adjourned.]

APPENDIX

98TH CONGRESS
1ST SESSION

H. R. 1312

To amend title 38, United States Code, to increase from fifty to sixty the number of associate members of the Board of Veterans' Appeals in the Veterans' Administration.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 8, 1983

Mr. APPLEGATE introduced the following bill; which was referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to increase from fifty to sixty the number of associate members of the Board of Veterans' Appeals in the Veterans' Administration.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4001 of title 38, United States Code, is amended by striking out "fifty" and inserting in lieu thereof "sixty".

SEC. 2. The amendment made by the first section of this Act shall take effect on October 1, 1983.

98TH CONGRESS
1ST SESSION

H. R. 2194

To amend title 38, United States Code, to authorize the expansion of the Board of Veterans' Appeals and the designation of certain individuals to act as members of the Board, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 21, 1983

Mr. APPLEGATE (by request) introduced the following bill; which was referred to the Committee on Veterans' Affairs

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A BILL

To amend title 38, United States Code, to authorize the expansion of the Board of Veterans' Appeals and the designation of certain individuals to act as members of the Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Board of Veterans' Appeals Act of 1983".

(b) Section 4001(a) is amended by striking out "fifty" and inserting in lieu thereof "sixty-five".

(c) Section 4001 is further amended by adding at the end the following:

"(c) The Chairman may from time to time designate an individual to act as a member of the Board. Not more than one individual so designated may be assigned to a section of the Board.".

(d) Sections 4001 and 4002 are amended by striking out the word "associate" wherever it appears.

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VETERANS ADMINISTRATION

Statement of Kenneth E. Eaton

Chairman, Board of Veterans Appeals

To the Subcommittee on Compensation,

Pension and Insurance

April 6, 1983

Mr. Chairman, I am very pleased to be able to meet with your subcommittee and to discuss the performance of the Board of Veterans Appeals, and H.R. 1312, a bill which would permit expansion of the Board from 50 to 60 members. With me are Roger K. Bauer, Vice Chairman of the Board and several of my key staff members. We shall be glad to respond to any questions you or your fellow members might have.

In your letter of March 1, 1983, you asked that we report on several areas of special interest to your subcommittee. We are pleased at this time to provide the following information with respect to the response time of appeals:

- At the end of fiscal year 1982 the average time lapse from the time a claimant submitted a notice of disagreement (NOD) until issuance of a BVA decision was 483 days (about 16 months).

- Average time required by Regional Offices to review the NOD and to prepare and mail the statement of the case (SOC) was 61 days.

- Our records show that an average of about 56 days elapsed from issuance of the SOC until the appellant responded with a substantive appeal.

- Regional Offices completed their reviews of substantive appeals and were ready to certify them to the Board in approximately 90 days. Because substantive appeals exceed the Board's capability to process them, we employ an ADP system--VARMS (Veterans Appeals Record Management System) to control the flow of cases to the BVA. Each month the Board requests that the Department of Veterans Benefits (DVB) transfer a number of appeals to Central Office. VARMS selects the proper number of cases--oldest first, based on dates of NOD--and notifies each Regional Office of the specific cases to be transferred to the BVA. This call-up procedure works well and permits us to keep a good flow of appeals to the Board, while holding the rest of the cases in Regional Offices where they can respond to inquiries from appellants and process other actions as needed.

- The average case spent about 176 days awaiting call-up through VARMS--from the date of certification to the date received at the Board.

- Processing through the Board of Veterans Appeals took an average of 100 days. From samples, we estimate that it takes about 60 days from the time of receipt at the Board until the case is assigned to an attorney for preparation of a decision. About 40 to 50 days are spent during which time Service Organizations or other representatives prepare their briefs or present arguments in support of the appellant's claim. The other 10 to 20 days are required for administrative processing, docketing, answering correspondence or other inquiries, and processing and transmitting completed decisions. Processing within Board Sections--including research; decision preparation, dictation, and review; and approval by board members--takes an average of about 40 days.

- In summary, the overall response time for the average appeal at the close of Fiscal Year 1982 was 16 months. Approximately seven months were required by the Regional Offices and about nine months were chargeable to the BVA. In field stations, appellants used an average of two months to prepare and submit their appeals after receiving their statement of the case. At the Board about a month and a half was spent by representatives on behalf of appellants as they developed and presented further arguments for the record or testimony at hearings on appeal.

Please realize that these times are merely averages. Some appeals require much longer than 16 months to resolve. They might include one or more of the following: a personal hearing before a rating board acting as an agent for the BVA; a hearing before a traveling section of the BVA; a personal hearing before the Board in Central Office; an independent medical expert's (IME) opinion, or an opinion from the Armed Forces Institute of Pathology (AFIP); a medical opinion from the Chief Medical Director of the VA; or a legal opinion from the General Counsel of the VA.

Under the Board's current Rules of Practice, the appellant or representative is given the opportunity to review and respond to any of the professional opinions cited above. We allow 60 days for this purpose.

Here are some statistics concerning opinions of independent medical experts:

- Over each of the past several years, Board Sections have requested about 150 IME opinions. In addition, we have requested about 55 AFIP opinions each year. At the present time we have arrangements with more than 70 medical schools to obtain IME's.

- Allowance rates on appeals in which IME or AFIP opinions have been obtained are about 33 percent. Here we

must emphasize that cases involving IME or AFIP opinions have complex or controversial questions of medicine concerning the etiology of diseases, whereas the vast majority of appeals involve questions of judgment and do not require exceptional expertise in a medical discipline. Unless there is a significant medical question or material disagreement between or among physicians involved in examining or treating an appellant, there generally is no reason to seek an IME opinion. Cases wherein IME opinions are requested are therefore much better candidates for possible allowance. For the reasons mentioned above, we believe that the allowance rate on appeals involving these opinions would tend to drop if a significantly increased volume of IME opinions is requested. It should be noted that there is about a two-month delay in appeals processing time when IME or AFIP opinions are involved.

A provision to authorize the expansion of the Board is needed in order to meet the increasing appellate caseload of the Board and to prevent further accumulation of cases awaiting appellate review. Since 1946, when the current ceiling of 50 Board members was placed in the law, the Board's annual workload has expanded from approximately 24,000 cases to 42,000 in Fiscal Year 1982. At the same time, the veteran population served by the Board has grown

from less than 17 million in 1946 to over 30 million at present.

During Fiscal Year 1982, the Board's receipt of cases for review exceeded those dispatched by approximately 6,200 cases. During the past decade, despite its best efforts, the Board has accumulated a backlog of more than 27,000 appeals and has experienced a growing delay in the ability to decide all cases expeditiously. It is anticipated that this backlog will continue to increase and the Board may slip further behind in its efforts to decide these appeals in an expeditious manner. An expansion of the Board's size would help to alleviate these problems.

H.R. 1312 would have a beneficial effect on the Board's operation and reduce response time. Raising the limitation on board members to 60 would permit us, assuming appropriations are made available, to expand the Board to 19 fully-staffed sections. The organization would include two Deputy Vice Chairmen and 58 other members (three in each of 19 sections plus one alternate).

The BVA budget request for FY 1984 is structured around an organization of 19 fully-supported sections. We believe that with this organization we would be able to produce

about 41,800 decisions annually. This should equal the projected input of appeals. As a consequence, we anticipate that the Board's average response time would drop from about 325 days at the start of FY 1984 to about 273 days at the end of the year. These figures do not reflect the passage of any judicial review legislation. With input and output about balanced, response time would then stay about the same. Of course, fluctuations in the number of appeals filed would affect directly the Board's response time in future years.

While H.R. 1312 would significantly improve existing appellate services, I would like to call your attention to the Veterans Administration's draft bill introduced by request as H.R. 2194, 98th Congress, on March 21, 1983. H.R. 2194, if enacted, would afford the Administrator additional flexibility to increase the number of Board members to 65, five more than H.R. 1312 would authorize.

I urge the Congress to favor H.R. 2194 over H.R. 1312 because it would allow a further increase in Board strength. The provisions of H.R. 1312 would authorize an increase to 19 Board Sections. With the additional manpower authorized by H.R. 2194, the Board could begin to actively address the problem posed by the large volume of appeals which have accumulated over the years. Instead of merely meeting the anticipated volume of appeals with 19 Sections, H.R. 2194

would allow the Board flexibility to adjust its membership up to 21 Sections in order to reduce the present backlog of appeals. In the absence of passage of judicial review legislation, we believe that the Board would be able to produce approximately 46,200 decisions annually. The Board's appellate response time would then drop from about 325 days at the beginning of FY 1984 to about 212 days by the end of that year. Thereafter, we believe that our average response time would decline by approximately 40 days per year.

In addition, H.R. 2194 is the preferable bill because it would make clear that the Chairman has authority to designate senior attorneys to act as Board members. However, no more than one such member would be assigned to any section of the Board. Such an amendment to the existing law would allow the Board to adapt to exigent situations; for example, the Board could temporarily fill vacancies which occur periodically due to prolonged illness, sudden retirement, or Board members conducting hearings in the field. Such authority would assist our expeditious handling of cases while at the same time ensure that all Board decisions receive a full review by three individuals.

Mr. Chairman, this completes my prepared statement. We will be happy to answer any questions that you might have.

STATEMENT OF
JOHN F. HEILMAN
NATIONAL LEGISLATIVE DIRECTOR
DISABLED AMERICAN VETERANS
BEFORE THE
SUBCOMMITTEE ON COMPENSATION, PENSION & INSURANCE
OF THE
HOUSE VETERANS AFFAIRS COMMITTEE
APRIL 6, 1983

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

On behalf of the over three-quarters of a million members of the Disabled American Veterans, I am pleased to appear here today to present the views of our organization on the performance of the Board of Veterans Appeals (BVA) of the Veterans Administration and legislation designed to assist BVA in fulfilling its mission.

Mr. Chairman, the DAV commends you and the members of the Subcommittee for holding this hearing. Clearly, this reflects the sincere interest and concern of the Subcommittee relative to the manner in which the VA's appellate process serves our nation's veteran population.

As you know, Mr. Chairman, the DAV's primary interest is in the welfare of America's service-connected disabled veterans, their dependents and survivors. However, DAV services are not restricted solely to the service-connected veteran, as we offer counseling and representation to all veterans, their dependents and survivors in any claim they may pursue for benefits administered by the Veterans Administration.

(In addition, the DAV offers representation to veteran claimants in matters pertaining to: (1) Disability Insurance Benefits of the Social Security Administration and (2) upgrading of discharges and correction of military records in our nation's uniformed services.)

In order that our organization can provide representation to those veterans and their family members who desire our services, the DAV employs some 263 full-time, professionally trained claims representatives in 68 offices throughout the country. These National Service Officers (NSOs) are physically located in and/or regularly visit most VA Regional Offices and VA medical facilities. To insure that each individual VA claimant receives complete and thorough DAV representation throughout the claims processing system, the DAV also maintains a National Appeals Office here in Washington, D. C.

The function of this office is to represent VA claimants who have received adverse benefit determinations and who have filed an appeal with such decisions. Presently, our National Appeals Office is manned by nine highly skilled National Appeals Officers who, collectively, have some 90 years of experience in VA claims work. In 1982, this DAV staff had power of attorney and represented 40.4% of all BVA decisions entered--more than all of the other veteran service organizations combined.

Mr. Chairman, the DAV views the objectives of the VA appellate program, as outlined in MBVA-1, Change 16 (February 18, 1977), in accordance with what should be expected from an appellate body of last resort:

1.01 Objectives of the Appellate Program

A. Major. The major objective is to equitably decide appeals under all laws administered by the VA, with sympathetic understanding and as expeditiously as possible consistent with quality, in order to grant all benefits to which veterans and their dependents are entitled.

B. Specific. Specific objectives are:

1. To promulgate quality decisions which are equitable, comprehensive, fully reasoned and self-sustaining.

2. To maintain a high level of promptness in deciding appeals consistent with the quality of decisions expected of an appellate agency of last resort.

Mr. Chairman, aside from an Administrative Service which handles support functions and activities, BVA appeals are primarily addressed by a Professional Service presently composed of 18 Board Sections (authorized personnel on hand are 16 Sections, the 17th and 18th having been added and manned by existing personnel).

Each Board Section is composed of three members: a chief member (attorney), a medical member (physician) and a legal member (attorney). In addition, each Section has assigned to it six or seven "attorney reviewers" and a secretary.

Mr. Chairman, the case load of appeal decisions handled by BVA has been steadily on the upswing for the past ten years (see attachment--VA Appellate Work Loads, Fiscal Years 1972-1982). In Fiscal Year 1982, a record breaking total of 68,588 appeals (Notices of Disagreements) were filed by VA claimants nationwide. Of this figure, 38,849 substantive appeals were received by BVA and 35,711 decisions were rendered. Substantive appeals pending at BVA at the end of 1982 totalled 12,175. Ten years ago, those figures were: 54,189 NODs filed, 29,945 appeals received by BVA, 29,692 decisions rendered and 5,231 appeals pending.

One might expect that a steadily increasing case load, without a concurrent appropriate increase in personnel, would result in a delay in the decision making process. This has, in fact, occurred.

According to data submitted to the Subcommittee by BVA in June of last year, the average length of time involved from the filing of an appeal (NOD) to BVA decision has increased from 250 days in 1975 to 427 days in 1982--increasing from 8 months to 14 months.

Obviously, BVA is shorthanded. The addition of two Board Sections manned by existing personnel, mentioned earlier, is a clear indication of this. The subject legislation of today's hearing addresses this situation.

H.R. 1312 & H.R. 2194

The measure H.R. 1312, introduced by yourself, Mr. Chairman, on February 8 of this year proposes to amend Section 4001 of Title 38, USC, thereby authorizing the VA Administrator to expand the size of the Board of Veterans Appeals from the present statutory ceiling of 50 members to 65 members.

The pending measure H.R. 2194, introduced by you at the request of the Veterans Administration, proposes this same BVA member increase.

In addition, H.R. 2194 would give specific statutory authority to the Chairman of the Board of Veterans Appeals to designate, from time to time as he sees fit, certain individuals (senior BVA attorneys) to act as members of the Board.

Finally, H.R. 2194 would delete the word "associate" from present statutory language (Sections 4001 and 4002 of Title 38, USC) pertaining to Board members.

Mr. Chairman, the DAV strongly supports passage of this legislation. The current BVA case load and future projections of that case load, combined with the necessity for VA claimants to receive prompt, comprehensive and equitable appellate decisions, require immediate Congressional action. We therefore urge the Subcommittee to act favorably on all provisions contained in the two pending measures.

This completes my testimony, Mr. Chairman, thank you very much for allowing the DAV to participate in today's proceedings.

VA APPELLATE WORK LOADS, FISCAL YEARS 1972-1982*

	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982
Notices of Disagreement Filed	54,189	50,381,	43,205,	45,663,	53,073	62,176	66,464	61,097	63,700	68,183	68,588
Substantive Appeals Forwarded to BVA	29,326	28,987	25,714	26,022	29,945	36,721	36,655	34,124	30,206	34,686	38,849
BVA Decisions Entered	29,692	29,825	26,209	25,027	28,482	33,296	35,634	34,972	34,030	33,461	35,711
Substantive Appeals Pending at BVA - End of Period	5,231	4,393	3,898	4,893	6,544	11,470	12,491	11,636	7,812	9,037	12,175

*Source - Veterans Administration

STATEMENT OF LT. COL. DAVID J. PASSAMANECK, USA. RET.

SPECIAL LEGISLATIVE CONSULTANT

For The
NATIONAL COMMANDER OF AMVETS

Before The

SUBCOMMITTEE ON COMPENSATION AND PENSION

Of The

COMMITTEE ON VETERANS' AFFAIRS

U. S. HOUSE OF REPRESENTATIVES

April 6, 1983

With respect to Enlarging the Membership of the Board of Veterans Appeals:

Thank you for the privilege of appearing before this distinguished Subcommittee to present the views of the American Veterans of World War II, Korea and Vietnam. My name is Col. David J. Passamaneck and I am presently serving as a Special Legislative Consultant to Robert Martin, the National Commander of AMVETS.

AMVEST is in favor of legislation which would provide for the expansion of the Board of Veterans Appeals. The substantial and continuous backlogs with which the Board of Veterans Appeals has been afflicted in recent years would certainly make it difficult for any responsible advocate of veterans entitlements to oppose an augmentation of the Board.

This Subcommittee is here considering two bills to accomplish such an expansion of the Board of Veterans Appeals. H.R. 1312 introduced by Mr. Applegate would simply permit the membership of the Board to increase to 60, 10 more than the current maximum. H.R. 2194, also introduced by Mr. Applegate, on request of the Veterans Administration, would permit the Board to be expanded to 65 members and would permit the Chairman to designate a maximum of one person per BVA Section to act in the capacity of a Board member. H.R. 2194 would also clarify some potentially inconsistent language in Sections 4001 and 4002 of Title 38, United States Code.

AMVETS favors expansion of the Board of Veterans Appeals to 65, and the cosmetic correction contained in H.R. 2194. We do not, however, endorse so crucial an increase in the powers of the Board of Veterans Appeals Chairman, as prescribed in Subsection "(c)" of H.R. 2194. The authority to designate up to one-third of the effective membership of the Board, without durational limit would endow the Chairman with a degree of unilateral control over the Board in excess of the appointive power for regular members, shared by the Administrator and the President. AMVETS believes that this would result in a potentially serious compromise in the independent integrity of BVA members, who's function is quasi-judicial and not administrative.

On June 24 of last year, Mr. Gabriel Brinsky, then the National Legislative and Service Director of AMVETS stated to this Subcommittee that increasing the size of the Board is not the only way to improve the product. He pointed out, for example, that effective shortcuts in the administrative processing of decisions and more stringent enforcement of a time limitation of one year following a decision at the Regional Office level would substantially cut down on the backlog.

With the reservations as noted, AMVETS favors the enactment of H.R. 2194.

This concludes my testimony, Mr. Chairman and I will be happy to respond to any questions.

VETERANS OF FOREIGN WARS OF THE UNITED STATES

OFFICE OF THE DIRECTOR

STATEMENT OF

DONALD H. SCHWAB, DIRECTOR
NATIONAL LEGISLATIVE SERVICE
VETERANS OF FOREIGN WARS OF THE UNITED STATES

BEFORE THE

SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
COMMITTEE ON VETERANS' AFFAIRS
U. S. HOUSE OF REPRESENTATIVES

WITH RESPECT TO INCREASING THE NUMBER OF ASSOCIATE
MEMBERS OF THE BOARD OF VETERANS APPEALS

WASHINGTON, D. C. APRIL 6, 1983

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the privilege of appearing before this distinguished Subcommittee to present the views of the Veterans of Foreign Wars of the United States.

My name is Donald H. Schwab and it is my privilege to serve the more than 1.96 million men and women of the Veterans of Foreign Wars as their National Legislative Director.

Mr. Chairman, the Veterans Administration's Board of Veterans Appeals (BVA) is established by chapter 71, Title 38 of the United States Code. The Board makes all final decisions on appeals involving benefits administered by the Veterans Administration, insuring that appellants are afforded due process of law and that veterans, their dependents and survivors receive all benefits to which entitled under current law.

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VFW MEMORIAL BUILDING ● 200 MARYLAND AVENUE, N. E. ● WASHINGTON, D. C. 20002 ● AREA CODE 202-543-2239

A claimant is advised of the decision of the Veterans Administration Regional Office and the right to appeal, if dissatisfied. The claimant has one year to initiate the appeal by filing a notice of disagreement. Next, the Regional Office reviews the case and if unable to grant the relief sought, furnishes the individual a Statement of the Case. If still dissatisfied with the decision, he or she may file a substantive appeal. If the case is then not resolved by the Regional Office to the satisfaction of the claimant, the case is certified to the Board of Veterans Appeals in Washington, D. C. for de novo review and final determination. As you know, under the provisions of 38 USC 5210, decisions of the Administrator are not subject to judicial review.

Presently, Mr. Chairman, the Board (BVA) is authorized a Chairman, a Vice Chairman and an appropriate number of associate members, along with professional, administrative and clerical support. Board members are broken down into sections of three, with each section composed of two attorneys and one physician. The current strength of the Board is 356 personnel, of whom fifty are associate members as stipulated in 38 USC 4001.

Mr. Chairman, the Board is currently receiving approximately 41,000 substantive appeals per year and is capable of rendering only 36,000 appellate decisions. Obviously, this situation results in the development of an extensive backlog which in turn significantly increases response time. The processing time of appeals from date of receipt of notice of disagreement to appellate disposition has deteriorated from ten months in 1978, to more than sixteen months at the conclusion of fiscal year 1982. It is interesting to note that the time required by the Veterans Administration Regional Office to carry out its activities in individual cases has remained relatively stable over the past five years, while the time charged to the Board of Veterans Appeals, including the period in which the case remains in

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a call-up status, has grown from four months in 1978 to nine months at the end of fiscal year 1982.

Mr. Chairman, the President's proposed budget for the Veterans Administration for fiscal year 1984 would increase professional staff and support personnel for the Board by fifty-two and funding by $2.4 million, enough to support a complement of nineteen sections. However, the Board is restricted by current law to fifty members, which means a complement sufficient to staff only sixteen sections. Although the Chairman of the Board of Veterans Appeals has, through necessity and with ingenuity, juggled resources to operate a seventeenth section and by the end of this fiscal year an eighteenth section and during fiscal year 1984, yet a nineteenth section, he is faced with a finger in the dike situation since, again, there exists sufficient Board members to staff only sixteen sections.

Mr. Chairman, the Veterans of Foreign Wars commends you for recognizing and responding to this problem by introducing two bills to amend 38 USC 4001 by increasing the number of members on the Board of Veterans Appeals. H.R. 1312 would increase membership from fifty to sixty and H.R. 2194, from fifty to sixty-five. Coupled with the previously cited personnel and funding increase in the proposed fiscal year 1984 budget, H.R. 1312 would provide the needed staff for nineteen Board sections and H.R. 2194 would allow for full staffing of twenty Board sections.

Mr. Chairman, each Board section is capable of deciding between 2,000 and 2,200 cases per year. Therefore, nineteen sections could resolve between 38,000 and 41,800 cases annually and twenty sections as many as 40,000 to 44,000 cases. In view of the projected backlog of some 20,000 cases by the end of fiscal year 1983 and the inordinate length of time veterans and their survivors must wait to learn the outcome of an appeal, the Veterans of Foreign Wars recommends the ad-

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vancement and passage of H.R. 2194 to increase the Board to sixty-five members. Assuming the number of appeals remains constant, nineteen sections would allow the Board to hold the line on growth of response time. Should funding be made available in the future for the staffing of a twentieth section, the Board could begin to cut what would probably be considered excessive response time. An additional desirable feature of H.R. 2194 is that it resolves ambiguity present in the current usage of senior attorneys as acting Board members in the absence of Presidential approved appointees. A three person review of a case is preferable to the necessary lesser review of one or two members set forth under current law.

As we have stated in previous hearings before this Subcommittee, our staff of Appeals Consultants do not always agree with decisions of the Board of Veterans Appeals. Notwithstanding, they are in complete unanimity that members of the Board of Veterans Appeals are dedicated public servants who carry out their assigned responsibilities in a highly professional manner.

On behalf of all claimants and potential claimants, the Veterans of Foreign Wars urges early passage of H.R. 2194. Mr. Chairman and members of this Subcommittee, we thank you for your continuing concern for our nation's veterans.

This concludes my testimony, Mr. Chairman, and my colleague or I will be happy to respond to any questions you may have.

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REMARKS OF HON. BOB MCEWEN AT HEARING OF SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE ON LEGISLATION TO ENLARGE THE AUTHORIZED MEMBERSHIP OF THE BOARD OF VETERANS APPEALS, APRIL 6, 1983

THANK YOU, MR. CHAIRMAN.

THE BOARD OF APPEALS OF THE VETERANS ADMINISTRATION HAS HAD A STATUTORY CEILING OF 50 MEMBERS FOR MANY YEARS. DURING THOSE YEARS, IT HAS HAD MANY NEW RESPONSIBILITIES PLACED UPON IT. FORMATS FOR ITS DECISIONS HAVE BEEN DRASTICALLY CHANGED. FINDINGS OF FACT AND CONCLUSIONS OF LAW ARE NOW REQUIRED. INDEPENDENT MEDICAL OPINIONS FROM LEADING MEDICAL AUTHORITIES ARE SOMETIMES REQUESTED. THE CHIEF MEDICAL DIRECTOR OF VA AND ITS GENERAL COUNSEL ARE OFTEN CONSULTED. ADDED TO ALL OF THIS IS THE FACT THAT THE NUMBER OF APPEALS PRESENTED TO THE BOARD HAS ALMOST DOUBLED SINCE THE CEILING OF 50 WAS IMPOSED. IT IS THEREFORE CERTAINLY NOT SURPRISING THAT THE BOARD'S DECISION-MAKING CAPACITY HAS NOT KEPT UP TO ITS CONSTANTLY INCREASING INCOMING WORKLOAD.

MR. CHAIRMAN, I THINK THE BOARD OF APPEALS SHOULD BE CONGRATULATED FOR ITS INNOVATIVE EFFORTS TO COPE WITH ITS HEAVY CASELOAD. IT HAS COMPUTERIZED; IT HAS USED SHORTCUTS WHEN IT COULD DO SO WITHOUT ADVERSELY AFFECTING QUALITY OF DECISIONS AND IT HAS SHIFTED ITS EMPLOYEES AROUND ON WORK DETAILS AS BEST IT COULD.

BUT, MR. CHAIRMAN, THE BOTTOM LINE IS THAT VETERANS SIMPLY HAVE TO WAIT FAR TOO LONG TO GET A DECISION ON THEIR CLAIMS. SIXTEEN MONTHS IS AN INTOLERABLE TIME TO WAIT. OF COURSE PART OF THAT TIME IS USED BY THE VETERAN AND PART OF IT IS USED BY THE REGIONAL OFFICES.

(MORE)

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BUT THE BOARD ITSELF WAITS ALMOST SIX MONTHS ON THE AVERAGE BEFORE IT IS EVEN ABLE TO CALL A CASE THAT IS READY FOR ITS REVIEW IN FROM THE REGIONAL OFFICE. IT THEN TAKES OVER THREE MONTHS TO GET A DECISION. AND THESE ARE ONLY AVERAGE FIGURES--MANY CASES TAKE MUCH LONGER.

MR. CHAIRMAN, THE VA AND THE ADMINISTRATION ARE ASKING US TO HELP CORRECT THIS VERY SERIOUS PROBLEM. I BELIEVE THAT THE PROPOSAL TO INCREASE THE CEILING OF THE BOARD OF APPEALS MEMBERSHIP TO 65 IS A MODEST ONE. THIS INCREASE--TOGETHER WITH ADDITIONAL SUPPORT PERSONNEL WHICH HAS BEEN REQUESTED IN VA'S 1984 BUDGET SUBMISSION--SHOULD BE OF MATERIAL ASSISTANCE AND SHOULD ENABLE VA TO SUBSTANTIALLY INCREASE ITS NUMBER OF DECISIONS.

MR. CHAIRMAN, I CONGRATULATE YOU UPON HOLDING THIS HEARING. I HOPE THAT OUR SUBCOMMITTEE WILL TAKE EXPEDITED ACTION SO THAT THE CONGRESS CAN QUICKLY ACT UPON THIS VERY IMPORTANT LEGISLATION.

THANK YOU, MR. CHAIRMAN.

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The American Legion
For God and Country
★ WASHINGTON OFFICE ★ 1608 "K" STREET, N.W. ★ WASHINGTON, D.C. 20006 ★
(202) 861-2700 ★

April 14, 1983

Honorable Douglas Applegate
Chairman
Subcommittee on Compensation,
Pension and Insurance
Committee on Veterans Affairs
House of Representatives
335 Cannon House Office Building
Washington, D.C. 20515

Dear Chairman Applegate:

This is in response to your correspondence dated April 7, 1983.

We apologize for the fact that it was not categorically stated in my letter of April 4, which of the two bills in question, H.R. 1312 or H.R. 2194, The American Legion would support for the purpose of expanding the Board of Veterans Appeals.

Based upon our knowledge of the steadily increasing work load at the Board of Veterans Appeals as explained in my earlier letter, The American Legion recommends the enactment of H.R. 2194, which would expand the BVA to sixty-five members and provide the Chairman with the authority to designate individuals as acting members of the Board when necessary.

Thank you for your interest in the views of The American Legion.

Sincerely,

R.E. LYNCH, Director
National Veterans Affairs and
Rehabilitation Commission

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